IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15957 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SASHIKANT C PRAJAPATI - Petitioner(s)
Versus
ANISHA CO-OP HOUSING SO.LTD. THRO.PRESIDENT / SECRETARY & 2 - Respondent(s)

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Appearance :

MR CHIRAG B PATEL for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
MR DHIRAJ M PATEL for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/10/2006

ORAL JUDGMENT

1. The petitioner has challenged an order dated 14-7-2006 passed by the Cooperative Tribunal,

Ahmedabad.

2. Shortly sated, facts leading to the present petition are as follows :

2.1 The petitioner claims to be the purchaser of flat no. B/201 of respondent no.1-Cooperative Society. The petitioner claims to have purchased the same in the year 2002. He claims to be a bona fide purchaser for value. Apparently, for the same property, respondents no. 2 and 3 had filed Lavad Suit No.114/2002 before the Board of Nominees. In the said suit, claim of these respondents was for allotment of same flat. The society was a party. The petitioner was admittedly not joined as party in the said proceedings. Eventually, the Board of Nominees allowed the suit filed by respondents no. 2 and 3 ex-parte since the society did not participate in the said proceedings. The petitioner approached the Cooperative Tribunal seeking permission to appeal against the order passed by the Board of Nominees. Since his

approach was belated, he also sought condonation of delay by filing Misc. Application No. 96/2006. It was this application which the Cooperative Tribunal rejected by the impugned order dated 14-7-2006. In the impugned order, Tribunal was pleased to observe that there are insufficient grounds to condone the delay. The petitioner has also filed Lavad Case No.1419/2005 before the Society. Therefore, two proceedings are initiated by him. Considering the delay and considering that the petitioner has already instituted separate proceedings before the Board of Nominees, Tribunal was pleased to reject his application for permission to appeal against the order passed by the Board of Nominees.

3. Having heard learned advocates appearing for the parties, I find that the Tribunal committed an error in rejecting the application of the petitioner.

4. It is not in dispute that in the Lavad Suit

filed by respondents no. 2 and 3 herein, the petitioner was not joined as party. The petitioner claims to be bona fide purchaser of the same property for value. In that view of the matter, he ought to have been permitted to question the order passed by the Board of Nominees. Learned advocate for the petitioner submitted that the proceedings initiated by the petitioner before the Board of Nominees have been withdrawn forthwith. He submitted that same were filed under mistaken legal advise and Board of Nominees not having power to review its own judgement only remedy available with the petitioner was to appeal against the judgement of the Board of Nominees.

5. Considering these aspects of the matter, I find that the request of the petitioner to appeal against he order passed by the Board of Nominees could not have been ignored.

6. The question of limitation however, needs to be taken into consideration. It is pointed out that

possession of flat in question was sought to be taken in October 2005 when the bailiff of Civil Court at the instance of respondents no. 2 and 3 approached the petitioner to hand over vacant possession of the flat. It was submitted that petitioner preferred application only in March 2006.

7. The petitioner did take steps to voice his grievance by approaching the Board of Nominees. Such approach may have been erroneous and under mistaken legal advise, nevertheless it cannot be stated that the petitioner was not vigilant and did not want to pursue his remedy. In that view of the matter, Tribunal could have viewed the delay in filing the application leniently and condone the delay. At the best, the petitioner could have been put to some terms. It cannot be forgotten that the petitioner who claim to be the owner of the flat paid full purchase price in the meantime lost his possession in February 2006.

8. Considering all these aspects of the matter, this petition is allowed. The impugned order dated 14-7-2006 passed by the Tribunal is set aside. The application of the petitioner being Misc. Civil Application No. 96/2006 shall stand allowed by condoning the delay and permitting the petitioner to appeal against the decision of Board of Nominees passed in Lavad Case No.114/2002. The petitioner shall however, pay the cost of Rs. 5,000/- (Five Thousand only) to respondents no. 2 and 3. It is clarified that there is no dispute that possession of the flat in question has already been handed over to the respondents no. 2 and 3 and the petitioner has lost the possession pursuant to execution proceedings. It will be open for the petitioner to request for early disposal of his appeal.

9. With these directions the petition is disposed of. Rule made absolute.

(Akil Kureshi, J.)

(raghu)